Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 96-238
Amendment of Rules Governing	)	
Procedures to Be Followed When	)	
Formal Complaints Are Filed Against	)	
Common Carriers	)	

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. In February 1996, Congress passed and the President signed the "Telecommunications Act of 1996" ("1996 Act").[1] We initiate this Notice of Proposed Rulemaking ("Complaint NPRM") to implement certain complaint provisions contained in the 1996 Act and to improve generally the speed and effectiveness of our formal complaint process. In furtherance of the 1996 Act's goals of establishing a "pro-competitive, de-regulatory national policy framework"[2] for the telecommunications industry and our goal under the Communications Act of 1934, as amended, of protecting consumers where the market fails to do so,[3] the 1996 Act prescribes deadlines ranging from 90 days to 5 months for the resolution of complaints against

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 to be codified at 47 U.S.C. §§ 151 et seq. (1996). The Communications Act of 1934, as amended, including the 1996 Act amendments, codified at 47 U.S.C. § 151 et seq., is referred to herein as the "Act."

[2] See S. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 1 (1996) ("Joint Explanatory Statement").

[3] One of the purposes of the Act is to "make available ... to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges..." 47 U.S.C. § 151.

the Bell Operating Companies[4] and other telecommunications carriers that are subject to the requirements of the Communications Act of 1934, as amended by the 1996 Act.[5] The 1996 Act further directs the Commission to establish such procedures as are necessary for the review and resolution of such complaints within the statutory deadlines.[6]

2. We tentatively conclude that the pro-competitive goals and policies of the 1996 Act would be enhanced by applying the rules proposed in this Complaint NPRM to all formal complaints, not just those enumerated in the 1996 Act. Therefore, our goal in initiating this proceeding is to facilitate faster resolution of all formal complaints by eliminating or streamlining procedures and pleading requirements under our current rules.[7] Applying the same standard procedures to all formal complaints will facilitate the filing process and help ensure consistent and uniform application of Commission rules. At a minimum, the procedures that we ultimately adopt in this proceeding will facilitate the full and fair resolution of complaints filed under the new statutory complaint provisions within the deadlines established by Congress. We seek, however, to establish rules of practice and procedure which, by providing a forum for prompt resolution of complaints of unreasonable, discriminatory, or otherwise unlawful conduct by BOCs and other telecommunications carriers, will foster robust competition in all telecommunications markets. This proceeding is one of a series of interrelated rulemakings designed to implement the 1996 Act by promoting competition and reducing regulation in the telecommunications marketplace, while simultaneously advancing and preserving universal service for all Americans.[8]

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[4] See 47 U.S.C. § 153(4), which defines "Bell Operating Company."

[5] Specifically, 47 U.S.C. § 208(b)(1), 47 U.S.C. § 260(b), 47 U.S.C. § 271(d)(6)(B), and 47 U.S.C. § 275 (c) all contain complaint resolution deadlines. Each of these provisions is discussed in more detail below.

[6] See, e.g., 47 U.S.C. § 271(d)(6)(B) stating that the "Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required for approval under paragraph 3."

[7] Our current rules regarding procedures to be applied to formal complaints against common carriers are set forth in 47 C.F.R. §§ 1.720 - 1.735. This Complaint NPRM is intended to address solely formal complaint issues and does not address issues concerning our rules for processing informal complaints against common carriers, codified at 47 C.F.R. §§ 1.711 - 1.718.

[8] See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-98, FCC 96-325 (rel. August 8, 1996), petition for review pending sub nom. and partial stay granted, Iowa Utilities Board et al v. FCC, No. 96-3221 and consolidated cases (8th Cir. Oct. 15, 1996) ("Local Competition Report and Order"); Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-308 (rel. July 18, 1996) ("BOC In-Region NPRM"); Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order, CC Docket No. 96-61, FCC 96-331 (rel. August 7, 1996); Implementation of the Telecommunications Act of 1996; Telemessaging, Electronic Publishing, and Alarm Monitoring Services, Notice of Proposed Rulemaking, CC Docket No. 96-152, FCC 96-310 (rel. July 18, 1996) ("Section 260, 274, 275 NPRM"); and Implementation of Section

The proposals made and tentative conclusions reached in this Complaint NPRM should be reviewed in conjunction with the enforcement goals and policies addressed in those related rulemaking proceedings.

A. Background

3. The 1996 Act added and, in some cases, amended, key complaint provisions that, because of their resolution deadlines, necessitate substantial modification of our current rules and policies for processing formal complaints filed against common carriers pursuant to Section 208 of the Act. We begin our background discussion with a review of the statutory framework for Section 208 complaints and a brief overview of the specific complaint provisions contained in the 1996 Act.

1. Statutory Framework for Complaints Against Common Carriers

4. Sections 206 to 209 of the Act[9] provide the statutory framework for our current rules for resolving formal complaints filed against common carriers.[10] Section 206 of the Act establishes the liability of a carrier for damages sustained by any person or persons as a consequence of that carrier's violation of any provision of the Act. Section 207 of the Act permits any person claiming to be damaged by the actions of any common carrier either to make a complaint to the Commission or bring suit in federal district court for the recovery of such damages. Section 208(a) authorizes complaints by any person "complaining of anything done or omitted to be done by any common carrier" subject to the provisions of the Act.[11] Section 208(a) specifically states that "it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."[12] Section 209 of the

255 of the Telecommunications Act of 1996, Notice of Inquiry, WT Docket No. 96-198, FCC 96-382 (rel. Sept. 19,1996).

9 47 U.S.C. §§ 206 - 209.

10 In addition, Section 415 of the Act generally prescribes a two-year statute of limitations on the recovery of damages or overcharges against a common carrier. Subject to limited exceptions, any complaint for recovery of damages must be filed within two years from the time the cause of action accrues. 47 U.S.C. § 415(b) - (c).

11 Section 208 was derived from Section 13 of the original Interstate Commerce Act of 1887. See I. Sharfman, The Interstate Commerce Commission, Vol. I, 17-19, Vol. IV, 170, 230 (1931). This legislation grew out of the Granger movement's drive to give "to agriculture relief from discriminatory and excessive charges in the transportation and handling of produce." Felix Frankfurter, The Commerce Clause 83 (1936). The legislation was declaratory of and codified existing common law obligations of railroads as common carriers so that they could not exercise their powers arbitrarily. See American Trucking v. Atchison T&S F.R. Co., 387 U.S. 397, 406 (1967).

12 47 U.S.C. § 208(a).

Act specifies that if "the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named."[13]

5. In 1988, Congress added subsection 208(b) to require that a subset of Section 208 complaints, those filed with the Commission concerning the lawfulness of a common carrier's charges, practices, classifications or regulations, must be resolved by the Commission in a final, appealable order within 12 months from the date filed, or 15 months from the date filed if "the investigation raises questions of fact of ... extraordinary complexity."[14] We tentatively conclude that the provisions of the 1996 Act that specifically refer to complaint procedures do not in any way diminish the Commission's broad authority under Section 208. We seek comment on this tentative conclusion.

2. Overview of Complaint Provisions Added by the 1996 Act

6. Certain sections of the 1996 Act contain deadlines for resolution of complaints alleging violations under the sections. For example, Sections 208(b), 260, 271, and 275 each contain specific resolution deadlines.

7. Section 208. Section 208(b)(1) shortens the resolution deadline for a certain subset of formal complaints. Section 208(b)(1) now mandates that "the Commission shall, with respect to any investigation under [Section 208(b)] of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 5 months after the date on which the complaint was filed."[15] Congress further added subsection 208(b)(2), which requires the Commission to resolve any such investigation initiated prior to enactment of subsection 208(b)(2) within 12 months after the date of enactment.[16]

8. Section 260. The 1996 Act also added Section 260, which provides, inter alia, that:

> [t]he Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (a) or the regulations thereunder that result in material financial harm to a provider of

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[13] 47 U.S.C. § 209. Under Section 207, any person "claiming to be damaged" by a carrier's violation of the Act has a choice of filing a complaint with the Commission or in federal district court, but not in both fora. 47 U.S.C. § 207.

[14] Federal Communications Commission Authorization Act of 1988, Pub. L. No. 100-594, 102 Stat. 3021 (Nov. 3, 1988) (1988 FCC Authorization Act).

[15] 47 U.S.C. § 208(b)(1).

[16] 47 U.S.C. § 208(b)(2).

> telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, the Commission shall, within 60 days after receipt of the complaint, order the local exchange carrier and any affiliates to cease engaging in such violation pending such final determination.[17]

9. Section 271. New Section 271(d)(6)(B) directs the Commission to "establish procedures for the review of complaints concerning failures by [BOCs] to meet conditions required for approval" under Section 271(d)(3) to provide in-region interLATA services.[18] Section 271(d)(6)(B) further provides that, "[u]nless the parties otherwise agree, the Commission shall act on such complaint within 90 days."[19]

10. Section 275. New Section 275(c) requires the Commission to "establish procedures for the receipt and review of complaints concerning violations of [Section 275(b)] or the regulations thereunder that result in material financial harm to a provider of alarm monitoring service."[20] Section 275(c) further provides that:

> [s]uch procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, ... the Commission shall, within 60 days after receipt of the complaint, order the incumbent local exchange carrier ... and its affiliates to cease engaging in such violation pending such final determination.[21]

11. Many provisions of the 1996 Act reference complaint proceedings to be conducted by the Commission without mandating resolution deadlines.

12. Section 255. New Section 255 of the Act, for example, imposes, inter alia, an obligation on manufacturers of telecommunications equipment or customer premises equipment to ensure that the equipment is "designed, developed, and fabricated to be accessible to and usable

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[17] 47 U.S.C. § 260(b).

[18] 47 U.S.C. § 271(d)(6)(B).

[19] Id.

[20] 47 U.S.C. § 275(c).

[21] Id.

by individuals with disabilities, if readily achievable."[22] Similarly, Section 255 further requires any providers of telecommunications services to "ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable."[23] The 1996 Act provides that "[t]he Commission shall have exclusive jurisdiction with respect to any complaint under this section."[24] Section 255 imposes no specific complaint resolution deadlines on the Commission. We note that the Commission recently released a Notice of Inquiry seeking comment on the implementation of Section 255. This NOI also seeks comment on enforcement issues.[25]

13. Section 274. New Section 274 of the Act contains no specific resolution deadline; rather, Section 274(e)(1) generally provides a private right of action to "any person claiming that an act or practice of any [BOC], affiliate, or separated affiliate constitutes a violation of [Section 274]."[26] Subsection 274(e)(1) provides that such person may file a complaint with the Commission or bring suit in federal district court as provided in Section 207 of the Act and that a "[BOC], affiliate, or separated affiliate" shall be liable for damages as provided in Section 206 of the Act.[27] Subsection 274(e)(2) permits an aggrieved person to apply to the Commission for a cease-and-desist order or to a U.S. District Court for an injunction or order compelling compliance with Section 274.[28]

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[22] 47 U.S.C. § 255(b). The term "disability" is defined in subsection 255(a) as having the "meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A))." 47 U.S.C. § 255(a)(1). "Readily achievable" is defined in subsection 255(a) as having the meaning given to it by section 301(9) of that Act (42 U.S.C. § 12181(9))." 47 U.S.C. § 255(a)(2).

[23] 47 U.S.C. § 255(c).

[24] 47 U.S.C. § 255(f). In limiting the remedies available under this Section, subsection 255(f) specifically excludes "any private right of action to enforce any requirement of the section or any regulation thereunder." Thus, a complaint filed with the Commission is the sole relief mechanism available to parties claiming a violation of Section 255.

[25] See Implementation of Section 255 of the Telecommunications Act of 1996, Notice of Inquiry, WT Docket No. 96-198, FCC 96-382 (Sept. 19,1996). See also Telecommunications Act Accessibility Guidelines for Customer Premises Equipment and Telecommunications Equipment, Notice, 61 Fed. Reg. 13813 (Architectural and Transportation Barriers Compliance Board, 1996).

[26] 47 U.S.C. § 274(e)(1).

[27] Id. This section further provides, however, that "damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(7) of this section and corrected within 90 days." 47 U.S.C. § 274(b)(8) provides that each separated affiliate or joint venture and the BOC shall have performed annually a compliance review that is conducted by an independent entity for the purpose of determining compliance during the preceding calendar year with any provision of Section 274.

[28] 47 U.S.C. § 274(e)(2).

14. We have already initiated rulemakings to implement the non-complaint provisions contained in the above-mentioned sections of the Act.[29] In commenting on the specific complaint processing provisions proposed in this Complaint NPRM, parties are encouraged to consider fully the proposals and comments in all of the previously released rulemakings that have been initiated to implement the 1996 Act.

B. Current Rules for Processing Formal Complaints Filed Against Common Carriers

15. The Commission's rules of practice and procedure for formal complaints against common carriers are codified in Sections 1.720 through 1.735 of our rules.[30] The Commission revised the rules in 1988[31] and most recently in 1993.[32] The changes in 1993 were initiated to further streamline and improve the complaint process, particularly in light of the 1988 amendment to Section 208 of the Act that imposed a 12 or 15-month deadline on the resolution of certain types of complaints.[33]

16. The Act affords private parties the option to pursue damages claims against common carriers before the Commission or in federal district court. Formal complaint proceedings before the Commission therefore have been treated similarly to federal court litigation but are generally decided on the basis of written pleadings and evidence rather than through trial-type procedures.

17. Under our current rules, the Commission serves any formal complaint containing sufficient allegations that a defendant carrier has violated or is violating a provision of the Act or a Commission rule or order on the defendant common carrier.[34] The defendant must either satisfy the complaint or file an answer within 30 days or such other time as directed by the staff.[35] The complainant may file a reply to affirmative defenses within 10 days after the answer

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[29] See supra note 8.

[30] See 47 C.F.R. §§ 1.720 - 1.735.

[31] Amendment of Rules Governing Procedures to be Followed Where Formal Complaints Are Filed Against Common Carriers, Report and Order, 3 FCC Rcd 1806 (1988).

[32] Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers, Report and Order, 8 FCC Rcd 2614 (1993).

[33] 1988 FCC Authorization Act, codified at 47 U.S.C. § 208(b)(1).

[34] 47 C.F.R. § 1.735(d).

[35] 47 C.F.R. § 1.724(a).

is served.[36] Throughout the formal complaint process, the parties to a complaint action may file motions requesting Commission orders addressing a wide variety of procedural and substantive issues. Generally, the parties may file oppositions to such motions within 10 days after the motion is served.[37]

18. Currently, both the complainant and defendant may engage in limited discovery under our rules.[38] Specifically, each party may address up to 30 single interrogatories, including subparts, seeking nonprivileged information relevant to the proceeding from the opposing party.[39] The parties may serve interrogatories within the period beginning with service of the complaint and ending 30 days after the date an answer is due.[40] Answers or objections to interrogatories are due within 30 days after service of the interrogatories, or the defendant may respond within 15 days after its answer to the complaint is filed, whichever date is later.[41] A motion to compel answers to interrogatories may be filed within 15 days from the date answers or objections were due.[42] The opposition to such motion is due 10 days after the motion to compel is filed.[43]

19. Other forms of discovery are available only if so ordered by the Commission.[44] Motions for additional discovery must be filed during the period beginning with the service of the complaint and ending 30 days after the answer to the complaint is filed or 15 days after responses to interrogatories are filed, whichever period is longer.[45] Oppositions to such motions are due 10 days after the motion is filed.[46] Documents produced through discovery may not be filed with the Commission unless so ordered.[47]

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[36] 47 C.F.R. § 1.726.

[37] 47 C.F.R. § 1.727.

[38] 47 C.F.R. §§ 1.729, 1.730.

[39] 47 C.F.R. § 1.729(a).

[40] Id.

[41] 47 C.F.R. § 1.729(b).

[42] 47 C.F.R. § 1.729(c).

[43] 47 C.F.R. § 1.727(e).

[44] 47 C.F.R. § 1.730(a).

[45] 47 C.F.R. § 1.730(c).

[46] 47 C.F.R. § 1.730(b).

[47] 47 C.F.R. § 1.730(d).

20. At any time, the Commission may require parties to file additional briefs addressing legal issues and summarizing the pleadings and other record evidence.[48] Parties may also voluntarily submit briefs in the absence of an order by the Commission that briefs be filed.[49] Reply briefs may be submitted within 20 days from the date initial briefs are due.[50] Briefs may be up to 50 pages if discovery is conducted and up to 35 pages if discovery is not conducted.[51] In addition, the Commission may call status conferences to narrow the issues, obtain stipulations of fact, assess the sufficiency of the record, plan discovery, pursue settlement, or conduct other discussions.[52]

II. PROPOSED AMENDMENTS TO RULES OF PRACTICE AND PROCEDURE

21. This proceeding focuses on rules and procedures necessary to implement the 1996 Act's complaint provisions and to expedite generally the resolution of formal complaints against common carriers. In some instances, our current rules permit parties to file pleadings that may be of limited value in reaching final resolution of the complaint and may prolong the resolution of important issues that directly affect competition in the marketplace. The new complaint provisions under the 1996 Act require considerably expedited complaint proceedings. The delays that occur under our current rules will be problematic for all carriers and, in the newly deregulated telecommunications market, small businesses and new entrants will be particularly vulnerable.[53] One of the main goals of this rulemaking is to implement requirements that encourage potential parties to resolve their differences prior to adjudication before the Commission. Encouraging parties to resolve their differences in advance will decrease the likelihood that the parties will need to file formal complaints. To the extent such settlement efforts fail or are otherwise impractical, the proposed rules are designed to ensure diligence by complainants and defendants in presenting their respective claims to the Commission.

22. We recognize the difficulty in crafting procedural rules that contemplate full resolution of what are likely to be complex legal and factual issues within 90 days or even 5 months. Many of our proposals are based, in part, on our examination of several models of

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[48] 47 C.F.R. § 1.732(a).

[49] Id.

[50] 47 C.F.R. § 1.732(d).

[51] 47 C.F.R. §§ 1.732(b), (c).

[52] 47 C.F.R. § 1.733.

[53] See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113, Notice of Inquiry, 11 FCC Rcd 6280 (rel. May 21, 1996). Some commenters in the Section 257 proceeding cite delay under our current rules as a potential barrier to entry and to effective enforcement. The revisions proposed herein are designed to expedite the process for all carriers, thereby eliminating the real and perceived barriers cited by the commenting parties in the Section 257 proceeding.

litigation efficiency, including the Federal Rules of Civil Procedure and the "rocket docket" procedures utilized in the U.S. District Court for the Eastern District of Virginia.[54] Our goal is to achieve a full and sufficient record upon which to render decisions within the stated deadlines while not adversely affecting the rights or interests of any party. With this purpose in mind, we propose to require or encourage complainants and defendants to engage in certain pre-filing activities, change service requirements, modify the form and content of initial pleadings, and shorten filing deadlines. In addition, we seek comment on whether we should eliminate certain pleading opportunities that may not be useful or necessary, and eliminate or modify the discovery process.

23. Generally, the proposed pleading requirements discussed in detail in the paragraphs that follow would require greater diligence by complainants and defendants in presenting and defending against claims of misconduct. Under these proposals, each complaint filed with the Commission must include: (1) a full recitation or statement of facts believed to be relevant, along with supporting affidavits and documentation, including agreements, offers, counter-offers, denials, or other relevant correspondence; (2) a copy of, or a description by category and location of all documents, data compilations and tangible things in the complainant's possession, custody or control that are relevant to the disputed facts alleged with particularity in the complaint; (3) the name, address and telephone number of each individual likely to have discoverable information relevant to the disputed facts alleged with particularity in the complaint, identifying the subjects of information; (4) full identification or description by the complainant of communications, services, facilities, or other carrier conduct at issue in the complaint and the nature of the injury allegedly sustained; (5) the specific relief or action being sought by the complainant; (6) certification by the complainant that it previously discussed the possibility of settlement with the defendant; (7) a statement whether suit has been filed or action begun in any court or other government agency on the basis of the same cause of action alleged in the complaint; (8) a completed "Formal Complaint Intake Form" indicating full adherence to all form and content requirements.[55]

24. Similarly, the proposed pleading requirements would compel defendant carriers to include in their answers: (1) specific admissions or denials of each and every averment in the complaint (general denials are expressly prohibited) along with affidavits and supporting documentation; (2) a copy of, or a description by category and location of all documents, data compilations and tangible things in the defendant's possession, custody or control that are relevant to the disputed facts alleged with particularity in the pleadings; (3) the name, address and

[54] See E.D. Va. R. 1, et. seq. The system for expedited disposition of civil litigation in the Eastern District of Virginia is popularly known as the "rocket docket." "The Eastern District of Virginia has consistently been the fastest and most efficient judicial district in the federal court system...[T]he mean time from filing of an answer to the trial is only seven months, less than half the national average of eighteen months." George F. Pappas and Robert G. Sterne, Patent Litigation in the Eastern District of Virginia, 35 IDEA: J.L. & Tech. 361, 363 (1995).

[55] See Appendix A, § 1.721.

telephone number of each individual likely to have discoverable information relevant to the disputed facts alleged with particularity in the pleadings, identifying the subjects of information. [56]

25. Mirroring the pleading requirements for complaints and answers, the proposed rules would also require that any motion or other request that is filed by a party to the complaint proceeding seeking procedural or substantive relief must contain or include proposed findings of fact and conclusions of law to support the relief requested, supporting documentation and affidavits; and a proposed order containing full factual and legal support for Commission consideration.[57] Furthermore, the parties would also be required to file a joint statement of proposed stipulated facts after the filing of the answer by the defendant.[58]

26. Our goal is to implement uniform requirements and procedures to resolve all formal complaints in an expeditious and fair manner. Accordingly, we invite interested parties to comment on the specific proposals described in the paragraphs that follow and to identify any other revisions or additions to our rules of practice and procedure that might assist in achieving our goal of timely resolution of all formal complaints. Interested parties are also invited to comment on the need, if any, for specialized requirements and procedures for handling complaints arising under particular provisions of the Act. Interested parties should describe any such specialized requirements and procedures in detail and explain how they can be effectively administered and enforced by the Commission. Appendix A contains the full text of the rules we propose in this Complaint NPRM. Parties that favor different approaches, or specialized requirements or procedures, should accompany their comments with the specific text of proposed rules.

A. Pre-Filing Procedures and Activities

27. We ask interested parties to identify specific pre-filing activities available to potential complainants and defendants that could serve to settle or narrow disputes, or facilitate the compilation and exchange of relevant documentation or other information prior to the filing of a formal complaint with the Commission. In handling numerous formal complaint actions over the years, our experience has been that many complaints have been filed with the Commission with little or no prior discussions or information exchanges between the complainant and the defendant carrier. Often, the complainant and defendant carrier promptly settled the disputes underlying such complaints after the exchange of relevant information or following meetings between knowledgeable company representatives. Therefore, we wish to promote any actions that could either decrease the number of complaints filed with the Commission or narrow the scope of the issues in such complaints, particularly complaints that fall within one or more of the 1996 Act's resolution deadlines.

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[56] See Appendix A, § 1.724.

[57] See Appendix A, § 1.727.

[58] See Appendix A, § 1.732(a).

28. Specifically, we tentatively conclude that we should add a requirement that a complainant, as part of its complaint, certify that it discussed, or attempted to discuss, the possibility of a good faith settlement with the defendant carrier's representative(s) prior to filing the complaint.[59] We believe that requiring settlement discussions prior to filing will encourage greater communication between potential complainants and defendant carriers. The settlement discussion requirement should also encourage the parties to narrow issues and agree on relevant facts or identify facts in dispute well in advance of a complaint being filed with the Commission.[60] We tentatively conclude that failure to comply with this certification requirement will result in dismissal of the complaint. We seek comment on these proposals.

29. We also seek comment on whether a committee composed of neutral industry members would serve a needed role or useful purpose in addressing disputes over technical and other business disputes, before such disputes are brought before the Commission in the form of formal complaint actions that must be resolved under expedited procedures. Participation in a proceeding before such a committee would be strictly voluntary, perhaps in conjunction with an arbitration arrangement or other ADR mechanisms. At the same time, however, the brevity of the statutory timeframes demands that we be careful to ensure that any new procedures further our ability to make capable and fair decisions without adding needlessly to the time required to make them. Therefore, we ask commenters to address whether outside experts would be needed to address the technical issues likely to arise in formal complaints and, if so, whether use of a committee of such experts would expedite the resolution of complaints within the statutory timeframes.

B. Service

30. Service of formal complaints must be accelerated to accommodate the complaint resolution deadlines in the 1996 Act. Our primary goal in proposing changes to the current service procedures is to prevent the delay caused by those procedures, which implement the Section 208 requirement that the Commission serve formal complaints on defendant carriers. In addition, we believe it necessary, in light of the new complaint resolution deadlines, to expedite generally service of all pleadings by authorizing parties to effect service of their pleadings using methods other than service by U.S. mail.

31. Under our current practice, a defendant carrier generally does not receive the complaint until at least ten days after the complainant has filed the complaint with the Commission. Given the 1996 Act requirements that certain complaints be resolved within 90 days or 5 months, delays in service could jeopardize our ability to satisfy the statutory directives. We propose to authorize or require a complainant to effect service simultaneously on the

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[59] See Appendix A, § 1.721(a)(8).

[60] The Commission has in place a pilot project utilizing alternative dispute resolution ("ADR") techniques in the Section 208 formal complaint context. See Use of ADR in Commission Proceedings and Proceedings in which the Commission is a Party, 6 FCC Rcd 5669 (1991).

following persons: the defendant carrier,[61] the Commission, and the appropriate staff office at the Commission.[62] With regard to service on the defendant, a complainant would serve the complaint on an agent designated by the defendant carrier to receive such service.[63] Our proposed rule would require a complainant to serve the defendant's agent directly, either (1) in lieu of service by the Commission or (2) as an agent for the Commission for that limited purpose only. The above service requirements would also apply to defendants filing cross-complaints. We propose that the answer period would begin to run once the complaint has been served by the complainant on the defendant in the manner prescribed by the rules.[64] We seek comment on these proposals. We also propose to revise Section 1.1105 of our rules to provide for a separate lock box at the Mellon Bank in Pittsburgh for complaints against wireless telecommunications service providers. Currently, formal complaints against wireless service providers are sent to a Common Carrier Bureau ("Bureau") lock box at the Pittsburgh Bank and are then routed to the Formal Complaints and Investigations Branch of the Bureau's Enforcement Division. The Formal Complaints Branch staff must review and identify complaints relating to wireless service providers and route them to the Wireless Telecommunications Bureau's Enforcement Division. The establishment of a separate lock box for complaints against wireless service providers will help ensure the prompt receipt and handling of such complaints by the Wireless Telecommunications Bureau.

32. We also propose to amend the rules to require that a complainant, in addition to filing the complaint with the Commission's Secretary, serve a copy of the complaint and associated attachments directly on the Chief of the division or branch responsible for handling the complaint, i.e., the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau; the Chief, Enforcement Division, Wireless Bureau; or the Chief, Telecommunications Division, International Bureau.[65]

33. Consistent with our new service proposal and to facilitate a complainant's ability to effect such service on a defendant carrier, we propose to establish and maintain an electronic directory, available on the Internet, of agents authorized to receive service of complaints on behalf of carriers that are subject to the provisions of the Act and of the relevant Commission personnel who must be served.[66] In this regard, we note that Section 413 of the Act requires all carriers subject to the Act to designate in writing an agent in the District of Columbia for service

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[61] Currently, 47 C.F.R. § 1.47 requires that the Commission serve the complaint on the defendant.

[62] See Appendix A, §§ 1.47(b), 1.735(b), (d).

[63] See Appendix A, § 1.735(d).

[64] See Appendix A, §1.724(a).

[65] See Appendix A, § 1.735(b).

[66] See Appendix A, § 1.47(h).

of all process.[67] Our proposal to establish an electronic "service" directory would supplement the Section 413 requirement. Placing a "service" directory on the Internet would facilitate service of process in all Commission matters, not just those in the formal complaint context, by making the information more accessible as well as enhancing the speed at which information may be updated. The directory would list, in addition to the name and address of the agent, at least one of the following: his or her telephone or voice-mail number, facsimile number, or Internet e-mail address. We seek comment on this proposal and on what information should be included within the service directory.

34. As an additional measure to facilitate the preparation and prompt handling of formal complaints against carriers, we propose to amend Section 1.721 of our rules pertaining to the form and content of such complaints. Currently, Section 1.721(a) lists categories of information that must be included in any formal complaint filed under Section 208 of the Act and Part 1 of the Commission's rules.[68] In applying the requirement in Section 208 of the Act that

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[67] 47 U.S.C. § 413 provides that:

> It shall be the duty of every carrier subject to this Act to designate in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding or suit pending before the Commission, and to file such designation in the office of the secretary of the Commission.

In light of the proposals relating to service of formal complaints contained within this Complaint NPRM, Section 413 will have heightened significance for potential parties to formal complaints. We will take the necessary actions required to enforce this important statutory provision.

[68] 47 C.F.R. § 1.721. Specifically, subsection (a) provides that a formal complaint "shall" contain:

(1) The name and address of each complainant and defendant;
(2) The occupation, address and telephone number of each complainant and, to the extent known, each defendant;
(3) The name, address and telephone number of complainant's attorney, if represented by counsel;
(4) Citation to the section of the Communications Act and/or order and/or regulation of the Commission alleged to have been violated;
(5) A complete statement of facts which, if proven true, would constitute such a violation;
(6) Complete identification or description, including relevant time period, of the communications, transmissions, services, or other carrier conduct complained of and nature of injury sustained;
(7) The relief sought, including recovery of damages and the amount of damages claimed, if known; and
(8) Whether suit has been filed in any court or other government agency on the basis of the same cause of action.

Subsection (b) specifies a format that "may be used in cases in which it is applicable with such modifications as the circumstances may render necessary." 47 C.F.R. § 1.721(b).

the Commission serve the complaint on the defendant carrier, the staff routinely reviews complaints in the first instance and determines whether they meet the requirements under the Act and the Commission's rules. In light of the short resolution deadlines contained in the 1996 Act, we find it necessary to eliminate the delay often associated with this initial review. We propose to amend Section 1.721(a) to add the requirement that a complainant submit a completed intake form with any formal complaint as part of the filing requirement to indicate that the complaint meets the various threshold requirements for stating a cause of action under the Act and our rules.[69] We believe that such an intake form can be a useful tool to both speed the preparation and filing of complaints and avoid or reduce the time and resources involved in processing procedurally defective or substantively insufficient complaints. Moreover, an intake form requirement should help complainants avoid procedural and substantive defects that might delay full responses to otherwise legitimate complaints. In addition, the intake form can serve another useful purpose by quickly identifying for the staff and defendant carrier the relevant statutory provisions and any associated statutory time constraints. We seek comment on these and any other alternative proposals that would facilitate or improve the preparation and handling of formal complaints.

35. We also propose that, after service of the complaint on the defendant, parties should be required to serve all subsequent pleadings by overnight delivery or by facsimile to be followed by mail delivery.[70] Under our current rules, service is by mail.[71] The proposed new rule, which would affect formal complaints only, would eliminate the time lag involved in service by mail. We seek comment on this proposal.

C. Format and Content Requirements

36. The 1996 Act's complaint resolution deadlines necessitate substantial modification and, in some cases, clarification, of the content requirements for pleadings filed in formal complaint proceedings. Our overall goals are to improve the utility, quality, and content of the complaint, answer, and other filings submitted by parties in formal complaint cases and to expedite the issuance of orders that resolve procedural and substantive issues. Attaining these goals, especially in cases with resolution deadlines of 90 or 120 days, will be challenging. Some of the changes we propose are intended to place greater burdens on complainants and defendants to provide full legal and factual support early in the process, while others are designed to enable the Commission to prepare and issue procedural and substantive orders efficiently. Our goal is to carefully tailor our procedures to ensure that complainants and defendants have a full and fair opportunity to present or defend against allegations of misconduct without unnecessary pleadings.

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[69] See Formal Complaint Intake Form at Appendix B.

[70] See Appendix A, § 1.735(e).

[71] 47 C.F.R. § 1.47(d).

37. Under the proposed changes and clarifications to the existing rules discussed below, any party to a formal complaint proceeding must, in its complaint, answer, or any other pleading required during the complaint process, include full statements of relevant facts, and attach to such pleadings supporting documentation and affidavits of persons attesting to the accuracy of the facts stated in the pleadings.

38. As an initial matter, we seek comment on whether we should prohibit complaints that rely solely on assertions based on "information and belief." Assertions based on information and belief, although they may raise questions about the reasonableness or lawfulness of particular carrier conduct, may not be useful in our ultimate decision on the merits of the complaint. Interested parties are encouraged to comment on the benefits, if any, of allowing factual assertions based on information and belief and whether prohibiting such assertions would unduly inhibit a complainant's ability to present claims of unlawful behavior against carriers under applicable provisions of the Act.

39. We tentatively conclude that we should require a complainant to append to its complaint documents and other materials to support the underlying allegations and request for relief set forth in the complaint. Such a rule would, for example, require a complainant alleging violation of Sections 251 or 252 of the Act to append to its complaint a copy of its written interconnection request or proposed agreement submitted to the defendant LEC, along with a copy of the defendant LEC's written denial, counter-proposal or other written response, if any.[72] We tentatively conclude that failure to append such documentation to a complaint will result in summary dismissal of the complaint.

40. Our current rules require complaints to cite to the section of the Act alleged to have been violated by a carrier and to include a complete statement of the facts and a description of the nature of the injury allegedly sustained as a consequence of the alleged violation.[73] Because complainants' submissions under the current rule frequently do not contain the level of detail that we have found necessary or helpful to our resolution of complaints, we tentatively conclude that we should revise our rules to require more specifically that a complaint include a detailed explanation of the manner in which a defendant has violated the Act, Commission order, or Commission rule in question. Such a rule, for example, would require a complainant alleging that a BOC has ceased to meet any of the conditions that were required for approval to provide interLATA services pursuant to Section 271(c)(2)(B) of the Act[74] to include in its complaint a detailed explanation of the manner in which the defendant BOC has ceased to meet such

[72] See Appendix A, § 1.721(a)(5).

[73] See 47 C.F.R. § 1.720(b), (c).

[74] See 47 U.S.C. § 271(c)(2)(B).

condition or conditions, along with any associated documentation.[75] We seek comment on this tentative conclusion.

41. We also propose to require that all pleadings that seek Commission orders contain proposed findings of fact and conclusions of law with supporting legal analysis.[76] Under our current rules, Sections 1.727(c) and (d), parties are required to submit with their procedural or discovery motions and oppositions to such motions, proposed orders that incorporate the legal and factual bases for granting the requested relief.[77] We propose to require these submissions to be in both hard copy and on computer disks in "read only" mode and formatted in WordPerfect 5.1 for Windows,[78] or as otherwise directed by the staff in particular cases. We believe that receiving these pleadings and orders in an electronic format will reduce the burden on Commission staff in drafting necessary orders or letter rulings. The staff will be able either to incorporate relevant portions of the parties' submissions into the required orders or letter rulings or use the parties' proposed submissions or orders in their entirety. The information provided on the computer disk would be provided in hard copy as well, and such hard copy would be made part of the public record. We seek comment on this proposal.

42. We also propose to require parties to conform the format of any proposed order to that of a reported FCC order.[79] This requirement will help ensure consistency in the content and quality of the proposed orders submitted and facilitate prompt action on motions. A proposed order should be clearly captioned as "Proposed Order." We seek comment on this proposal.

43. We propose to require the complaint, answer, and any authorized reply to include two sets of additional information: (1) the name, address and telephone number of each individual likely to have discoverable information relevant to the disputed facts alleged with particularity in the pleadings, identifying the subjects of information; and (2) a copy of, or a description by category and location of all documents, data compilations and tangible things in the possession, custody, or control of the party that are relevant to the disputed facts alleged with particularity in the pleadings.[80] We note that this proposal comports with an analogous requirement under the Federal Rules of Civil Procedure.[81] This type of early disclosure will

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[75] See Appendix A, § 1.721(a)(5).

[76] See Appendix A, § 1.727(g).

[77] 47 C.F.R. § 1.721(c), (d).

[78] See Appendix A, § 1.734(d).

[79] See Appendix A, § 1.727(c)-(d).

[80] See Appendix A, §§ 1.721(a)(10), (11); 1.724(g), (h); 1.726(c), (d).

[81] See Fed. R. Civ. P. 26(a)(1)(A), (B).

enable the Commission and parties to identify quickly sources of information and prevent the delay involved in requesting and exchanging such information. We seek comment on this proposal.

44. We recognize that many of our proposed form and content requirements will require both complainants and defendants to expend more time and resources in the initial phases of formal complaint proceedings than is the case under our current rules and policies. We believe, however, that these higher initial costs will be somewhat offset by the prompt resolution of complaints and the avoidance of protracted and costly discovery proceedings and briefing requirements.[82] We also recognize, however, that many of the new pleading requirements proposed in this Complaint NPRM could be burdensome on individuals or parties, particularly those desiring or compelled to proceed without the assistance of legal counsel due to financial and other reasons. Upon an appropriate showing of financial hardship or other public interest factors, we propose to waive format and content requirements for complaints and answers under Sections 1.721 and 1.772 of the rules.[83] For example, the requirement for supporting documentation may be waived for complainants or defendants demonstrating good cause. We tentatively conclude that this waiver provision will help ensure that full effect is given to the proviso in Section 208 of the Act that "any person, any body politic, or municipal organization, or State Commission," may complain to the Commission about anything "done or omitted to be done" by a common carrier in contravention of the Act.[84] We seek comment on this proposal and tentative conclusion. We also seek comment on what standards should be used to determine "good cause" for waiving Section 1.721's format and content requirements.

45. We propose to modify the current rule that merely encourages parties to provide copies of relevant tariffs[85] to require parties to append copies of relevant tariffs or tariff provisions.[86] This modification comports with our general goal of making the facts of the case more readily available to Commission decision-making staff. We seek comment on this proposal.

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[82] It has been noted that the overall litigation costs of "rocket docket" cases in the U.S. District Court for the Eastern District of Virginia are lower than the costs of cases that take longer to resolve. See supra note 53.

[83] See Appendix A, § 1.721(c); 1.724(i).

[84] 47 U.S.C. § 208.

[85] 47 C.F.R. § 1.720(h).

[86] See Appendix A, § 1.720(h).

46. We will also modify our current rules to include expressly pleadings filed solely to effect delay in the prosecution or disposition of a complaint as filings for improper purpose within the meaning of section 1.734 of our rules.[87]

D. Answers

47. To ensure that we meet the deadlines imposed by the 1996 Act and to expedite the processing of formal complaints in general, we propose to reduce the permissible time for a defendant to file an answer to a complaint from 30 to 20 days after service or receipt of the complaint.[88] We tentatively conclude that this reduction is consistent with changes we have proposed regarding the form and content of pleadings and will not unduly prejudice the rights of any defendant. More pre-filing activity between and among potential complainants and defendants as well as more clear and concise allegations in any subsequent complaint should greatly enhance the ability of defendants to respond promptly to allegations of fact and law made against them. In any event, the 90-day resolution deadline for complaints filed under Section 271, for example, does not afford us much freedom in this area. The 1996 Act imposes greater burdens on complainants and defendants, as well as the Commission, and we believe that this proposed reduction of the time for answering a complaint strikes an appropriate balance with other proposed changes in this proceeding. We seek comment on this proposal.

E. Discovery

48. To implement the requirements of the 1996 Act and attain our overall goal of expediting the formal complaint process generally, we seek to establish a quick, effective, and efficient discovery process, when needed, that is narrowly focused only on relevant issues and facts that are of decisional significance.

49. We believe that one of the key elements to streamlining the enforcement process is to maximize staff control over the discovery process. In addition, we believe that the parties should continue to bear the burden of developing an adequate record, but that to the extent possible, the burden should be borne earlier in the proceeding, upon the filing of the initial pleadings rather than through discovery and associated briefs. In our experience, discovery has been the most contentious and protracted component of the formal complaint process. Under the time pressures of the new statutory deadlines, streamlining our current discovery process will be critical to our ability to meet these deadlines. Therefore we intend to carefully examine what, if any, role discovery should continue to play in resolving formal complaints, and we accordingly seek comment on a range of options to either eliminate or modify our current discovery process. Some of the options are not exclusive and would work in combination with others. Parties

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[87] Currently, Section 1.734 provides that the signature of an attorney or party shall be a certificate that, inter alia, the pleading is not "interposed for any improper purpose." 47 C.F.R. § 1.734. See Appendix A, § 1.734(c).

[88] See Appendix A, § 1.724(a).

should bear in mind when commenting on the specific options and in proposing any additional options that, should we ultimately decide that some degree of discovery as of right is necessary to quickly and fairly resolve formal complaints, heightened staff control of the scope and timing of such discovery will be crucial.[89]

50. First, we seek comment on the benefits and drawbacks of eliminating the self-executing discovery permitted under our current rules by prohibiting discovery as a matter of right. Under this proposal, the emphasis on developing facts and arguments necessary for the Commission to render reasoned decisions about the merits of a complaint would be placed at the complaint and answer stages of the proceeding rather than on discovery and subsequent briefing opportunities. It would be incumbent on complainants and defendants alike to present full legal and factual support for their respective claims in their complaints, answers and associated pleadings. To the extent that the record presented through such pleadings fails to provide a basis for resolving disputes over material facts or is otherwise insufficient to permit our resolution of a complaint, the staff would have the discretion to authorize limited discovery at the initial status conference to be held shortly after receipt of the defendant's answer to the complaint. We ask interested parties to comment on the practical effects of a rule that would prohibit discovery as a matter of right and leave it entirely within the discretion of the staff. For example, is discovery necessary to resolve formal complaints from either a legal or a practical standpoint? Would eliminating the automatic or self-executing discovery permitted under the current rules pose any particular hardship for complainants or defendants in identifying and obtaining relevant information that would assist the Commission in resolving complaints? Would it be difficult for any particular segment of complainants, e.g. small businesses or new entrants? Are there substitutes for traditional discovery at either the pre-complaint or post-complaint stage that would ensure that complainants and defendants can identify and exchange relevant information that could be submitted jointly by the parties? For example, would it be more expeditious in some or all cases to permit the staff to determine what information needs to be supplied and to direct the party in possession to provide it for the record? Would eliminating all discovery as of right increase the number of motions for discovery, thus delaying the resolution of the complaint and increasing the burden on the staff? Are there minimum standards the staff should apply in determining whether limited discovery is necessary to resolve issues and questions of fact raised in the complaint or answer? Would a case-by-case approach to all discovery make it difficult for the staff to ensure fairness and consistency in ruling on discovery requests? Parties are encouraged to address these and any other questions bearing on the proposal to prohibit discovery as a matter of right.

51. Second, as an alternative approach, we seek comment on the benefits and drawbacks of a proposed rule that would limit self-executing discovery to something other than the thirty (30) written interrogatories authorized under the current rules.[90] Consistent with our

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[89] See American Message Centers v. FCC, 50 F.3d 35, 40 (D.C. Cir. 1995) (The court noted the "relatively circumscribed role of discovery in a fact-pleading system" under the Commission's formal complaint rules.

[90] Currently, parties are permitted to serve 30 interrogatories. 47 C.F.R. § 1.729(a).

proposals regarding pre-filing activities and form and content of pleadings, we seek comment on whether a more limited form of discovery of right would accommodate a party's ability, where necessary, to identify and present to the Commission material facts that may be in the possession or control of the other party. We also seek comment on whether allowing a limited amount of discovery of right might decrease the staff's burden, by eliminating the need to decide discovery requests on a case-by-case basis. We also ask, however, whether limiting discovery in this manner would detract from full compliance with our rules regarding the level of detail that should be offered in support of complaints and answers. In keeping with our goal of expediting the processing of complaints, if we adopt this approach, we would allow the staff to permit additional discovery only in extraordinary cases. We invite interested parties to comment on the feasibility of limiting discovery in the manner discussed above. As stated above in paragraph 49, we believe it is crucial to enable the staff to control the scope and timing of discovery as a means to expedite resolution of complaints. For example, would reducing the number of allowable interrogatories achieve this? If so, what would be the appropriate new limit on the number of written interrogatories? Parties are requested to comment on whether there are any other restrictions that could be placed on written interrogatories and other discovery to achieve this objective. For example, in light of proposals discussed elsewhere in this Complaint NPRM that would require complainants and defendants to identify or exchange relevant documents and materials in their possession or control when they file their respective complaints and answers, should written interrogatories be limited to questions designed to illuminate specific factual assertions or denials contained in complaints and answers? Parties are encouraged to address these and other questions that might assist us in evaluating the need for and feasibility of limited, self-executing discovery, particularly in cases subject to one or more of the resolution deadlines mandated by the 1996 Act.

52. If we continue to allow some limited discovery as of right, we seek comment on the benefits and drawbacks of a rule that would require Commission staff to set limits on the scope of that discovery,[91] and to set specific timetables for such discovery. The information contained in the complaint, answer and proposed stipulated facts should enable the staff to determine more readily and more precisely which factual issues or disputes require the use of discovery tools for full and fair resolution. Authorizing the staff to limit the scope of the written interrogatories contemplated in the above paragraph could be an effective deterrent to attempts by parties to use discovery for purposes of delay or to gain tactical leverage for settlement purposes. To assist the staff in controlling the timetable for permissible discovery, we also propose to require that objections to interrogatories must be filed by the date of the initial status conference, during which staff rulings on such objections may be made. As a practical matter, the timetables for completion of discovery may be extremely short, due to the severe time constraints placed on the parties and the Commission by the complaint resolution deadlines in the 1996 Act. Under this proposal, we would anticipate that extensions of time to initiate limited

[91] Under the current rule, discovery subjects must be "nonprivileged matter which is relevant to the pleadings," and may not be "employed for the purpose of delay, harassment or to obtain information which is beyond the scope of permissible inquiry relating to the subject matter of the pleadings." 47 C.F.R. § 1.729(a).

discovery and file objections and motions to compel would be granted only in extraordinary circumstances.

53. As discussed in our proposals regarding the form and content of required pleadings, we have proposed that parties be given the option of either identifying relevant documents in their possession or control at the time they file their respective complaints and answers or providing a copy of such documents at a time concurrent with the filing of the complaint and answer. We seek comment on what benefits, if any, would be realized by the parties or the Commission by requiring such documents to be filed with the Commission along with the complaint and answers. Our current rules prohibit the filing of discovery documents with the Commission unless so ordered by the staff.[92] The principal rationale behind the current rule was our realization that parties typically relied upon only a small percentage of the documents and materials exchanged through discovery. There was no benefit to the staff of receiving hundreds or in some cases thousands of pages of materials that were of no decisional significance in either parties' view. In light of the requirement for expedited resolution of many types of complaints under the 1996 Act, it may be helpful or even necessary to have all relevant documents identified by the parties readily accessible to the staff and the other party. We also recognize, however, that the voluminous document production that is likely to accompany many complaints and answers could be administratively burdensome on the Commission. Thus, we invite interested parties to comment on whether relevant documents identified or exchanged, but not specifically relied upon by the identifying or exchanging party, should be filed with the Commission concurrent with the complaint or answer. We also seek comment on methods to reduce the administrative burden of filing such documentation with the Commission, such as requiring all documents to be scanned by computer and submitted on computer disk for ready access by the staff.

54. We recognize that, notwithstanding our desire to streamline the discovery process, discovery may be necessary in some instances. For such cases, the goal underlying the proposals discussed above is to identify mechanisms that will encourage parties to exercise diligence in identifying and satisfying their discovery needs. In a related vein, we note that the Commission does not have authority to award costs in the context of a formal complaint proceeding.[93] Nonetheless, we believe that resolution deadlines under the 1996 Act require us to identify and utilize new methods to encourage diligence by complainants and defendants in prosecuting or defending complaint actions. In conjunction with our discovery proposals, we seek comment on the feasibility of allowing the parties to a complaint proceeding to agree among themselves to a cost-recovery system as a basis for facilitating the prompt identification and exchange of information each side believes is necessary for a full and fair resolution of the matters in dispute. The parties could, for example, stipulate that the losing party in the complaint proceeding would bear the reasonable costs associated with discovery, including reasonable attorneys' fees. We believe that such a voluntary cost recovery mechanism for discovery efforts could help curb abuse

[92] See 47 C.F.R. 1.730(d).

[93] See Turner v. FCC, 514 F.2d 1354, 1356 (1975); Comark Cable Fund III v. Northwestern Indiana Telephone Co., 100 FCC 2d 1244, 1257 n.51 (1985).

of the discovery process by removing incentive to engage in dilatory and nonessential discovery. We also believe that voluntary agreements regarding imposition of costs will also encourage parties to present their facts fully in the initial pleadings and thereby avoid discovery altogether. We seek comment on this proposal.

55. Where we have granted a motion to compel in response to submission of evasive or incomplete answers to interrogatories or other discovery, we are prepared to use the full panoply of sanctions available to us under the Act and the Commission's rules to enforce compliance with that discovery ruling. This practice comports with the procedures set forth in the Federal Rules of Civil Procedure.[94] Sanctions could include actions such as summary dismissal or denial of relief requested by a party, rejection of proffered evidence, striking pleadings and other submissions from the record, and possible forfeiture actions.[95] We seek comment on these and any other types of sanctions that would be effective.

56. In complaint cases involving disputes over material facts that cannot be resolved without resort to formal evidentiary proceedings, we propose to amend our rules to authorize the Common Carrier Bureau, on its own motion, to refer such disputes to an administrative law judge for expedited hearing on factual issues.[96] Section 0.291 of the rules currently provides that the Chief of the Common Carrier Bureau shall not have authority to designate for hearing any formal complaints that present novel questions of fact, law or policy that cannot be resolved under outstanding precedents and guidelines.[97] Under the proposed modifications, the Bureau would no longer be precluded from designating factual issues for hearing. Adjudication of novel questions of law or policy, however, would remain outside of its delegated authority. As a practical matter, the Bureau would only designate matters for hearing in instances where it could not determine, based on the parties' written submissions, what had occurred or failed to occur and where such determination would be relevant to the issue of whether there had been a violation of the Act or our rules, orders, or policy. In other words, the Bureau would refer issues only where necessary to determine acts or omissions, and not to determine the legal consequences of such acts or omissions. We tentatively conclude that expanding the Bureau's delegated authority in this limited way will provide the staff with an important tool for resolving disputes

[94] Under the Federal Rules of Civil Procedure, sanctions for failing to obey a discovery order may include an order that the matter for which the order was made "shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;" an order refusing to allow the disobedient party to support or oppose designated claims or defenses or an order prohibiting a party from introducing designated matters in evidence; an order striking pleadings or staying further proceedings until the order is obeyed; an order dismissing the action; an order rendering a judgment by default against the disobedient party; or an order treating the failure to obey as contempt. Fed. R. Civ. P. 37(b).

[95] See 47 U.S.C. § 503(b)(1).

[96] See Appendix A, §§ 0.291(d); 1.720. We also note that we have delegated similar authority to the Wireless Telecommunications Bureau. See 47 C.F.R. § 0.331.

[97] 47 C.F.R. § 0.291(d).

over material facts that cannot be resolved without resort to formal evidentiary proceedings.[98] The Eastern District of Virginia has an analogous policy of utilizing magistrate judges for duties that include determining discovery motions, hearing and deciding matters designated by the district judge, and exercising full jurisdiction over civil cases by stipulation of the parties.[99] We seek comment on the feasibility of utilizing administrative law judges in resolving formal complaint actions. We are particularly interested in receiving views on our tentative conclusion that the designation of factual issues to an administrative law judge will, in some instances, facilitate the resolution of complaints filed against carriers subject to the Act's requirements.

F. Status Conferences

57. We propose to modify our rules concerning status conferences to improve the ability of Commission staff responsible for conducting complaint proceedings to render prompt decisions, or require the parties to take any necessary actions, in order to ensure resolution of complaints within the statutory deadlines and on an expedited basis generally.

58. We propose to amend Section 1.733 of our rules to require that, unless otherwise ordered by the staff, an initial status conference take place in all formal complaint proceedings 10 business days after the defendant files its answer to the complaint.[100] At the status conference, the Commission and parties may discuss such issues as claims and defenses, settlement possibilities, scheduling, rulings on outstanding motions, whether discovery is necessary, and if so, the scope of discovery and a timetable for completion of discovery. This proposal is analogous to a similar requirement for status conferences in the Federal Rules of Civil Procedure.[101] We expect that bringing the parties together at this early stage to discuss matters in conference will lead to amicable settlement of more cases or at least a narrowing of the issues, thereby reducing litigation costs as well as allowing the Commission to focus on prompter resolution of the case. We seek comment on this proposal.

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[98] Consistent with the authority delegated in Section 0.151 of our rules, 47 C.F.R. § 0.151, the Chief Administrative Law Judge would have the discretion to establish such expedited procedures and requirements as are necessary to receive documentary evidence, examine and cross-examine witnesses and prepare findings of fact within the timetables specified in any hearing designation order issued by the Commission or the staff pursuant to delegated authority. In the past we have designated pole attachment complaints to the Commission's administrative law judges. See, e.g., TCA Management Co., et. al v. Southwestern Public Service Company, 10 FCC Rcd 11832 (1995). The administrative law judges were instrumental in achieving settlement of all such cases before hearing.

[99] See Report of the Civil Justice Reform Act Advisory Group for the Eastern District of Virginia at 12-28 (Sept. 19, 1991).

[100] See Appendix A, § 1.733(a).

[101] See Fed. R. Civ. P. 26(f).